IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 2 of 1993

Date of Decision: 20.9.2006

Kulwant Kaur and another

...Appellants.

Versus

Bhajan Singh and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. SPS Bhullar, Advocate for the appellants.

Mr. Ashish Sharma, DAG, Haryana for respondents No.2 & 3.

Mr. Rohit Suri, Advocate for respondent No.4.

Mr. Paul S.Saini, Advocate for respondent No.6.

AJAY KUMAR MITTAL, J.

This appeal by the claimants has been filed for modification of the award dated 23.10.1992 passed by the Motor Accident Claims Tribunal, Patiala (for short, “the Tribunal”).

Briefly stated the facts of the case are that on 4.7.1989 at 10.15 A.M. an accident took place at Rajpura-Patiala road near village Kauli and the deceased, Sukhjinder Pal Singh was travelling in Bus No. HYX-4920 of Haryana Roadways from Patiala to Ambala Cantt. The bus collided with truck No. PUU-5001 and due to which, Sukhjinder Pal Singh deceased received multiple injuries as a result of which he died. It has been alleged that the accident took place due to rash and negligent driving of the bus

and the truck by their respective drivers. It has further been alleged that the deceased was a young man of 24 years of age and was carrying on the business of selling spare parts in the partnership concern of M/s Sahni Motors Samana having 50% share with part time job of promotion of sales of the products of Cibaca Co. under the employment of M/s Chandigarh Enterprises, Sector-26, Chandigarh and was getting Rs.925/- per month as emoluments besides TA and DA. He was earning Rs.2500/- per month from both sources. Further, the deceased was a matriculate and unmarried. On account of death of Sukhjinder Pal Singh, total compensation of Rs.5 lacs was claimed.

The claim petition was contested by the respondents. Respondents No.2 and 3 took the plea that the accident had occurred due to the rash and negligent driving of the offending truck as the truck was being driven at a very high speed behind the bus. M/s National Insurance Company respondent No.3-A also took up the same plea and had pleaded that in case the accident took place due to the negligence of the driver of the bus, then the liability of the Insurance Company was limited to Rs.15,000/- only as the deceased was travelling as a passenger in the bus. Respondent No.6 also contested the petition and pleaded that the accident took place due to the negligence of the driver of the bus.

On the pleadings of the parties, following issues were framed by the Tribunal:-

> "1. Whether the death of Sukhjinderpal Singh was due to the motor vehicular accident caused by rash and negligent driving of Truck PUU-5001 driven by Hakam Singh respondent no.4 and or due to rash and negligent driving of Bus No. HYX-4920 by its driver Bhajan Singh? OPP

2. Whether the petitioners are entitled to compensation with regard to death of Sukhjinder Singh. If so against which of the respondents and to what amount? OPP

3. Relief."

The Tribunal under issue No.1 held that the accident took place due to rash and negligent driving of truck No. PUU-5001 by its driver Hakam Singh-respondent No.4 and also due to rash and negligent driving of bus No. HYX-4920 by its driver Bhajan Singh-respondent No.1 and held both to be equally negligent.

The Tribunal while adjudicating issue No.2 determined the compensation at Rs.1 lac to be paid equally i.e. Rs.50,000/- by each set of respondents, besides the interest at the rate of 12% per annum from the date of application till the realization of compensation, less Rs.25,000/- already paid as an interim compensation. The Tribunal held that the deceased was one of the passengers of bus No. HYX-4920 and according to the tariff applicable at the relevant time, the liability of the National Insurance Company with whom the vehicle was insured was limited to Rs.15,000/- only and, therefore, the remaining amount of Rs.35,000/- was payable by Haryana Roadways and Haryana State. As regard the liability of the offending truck, the Tribunal held that the same was insured with New India Assurance Company and, therefore, the amount of Rs.50,000/- was payable by the driver and owner as well as the Insurance Company and further that the primary liability would be of the Insurance Company.

Learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is inadequate and under Section 168 of the Motor Vehicles Act, 1988, the Tribunal ought to have awarded just compensation to the claimants.

Learned counsel for the respondents, on the other hand,

submitted that no interference in the compensation awarded by the Tribunal is called for.

I have heard learned counsel for the parties and with their assistance perused the record.

The claimants have examined Varinder Goel AW1 who is an accountant with M/s Chandigarh Enterprises and Maninder Pal Singh AW6 for establishing the annual income of the deceased. From the oral testimonies of the said witnesses and the material produced by the claimants, the Tribunal assessed the income of the deceased at Rs.1000/- per month. The Tribunal had determined the dependency at Rs.550/- per month and after applying the multiplier of 16, determined the total compensation at Rs.1 lac.

The income of the deceased Sukhjinder Pal Singh assessed at Rs.1000/- per month is correct and cannot be said to be on the lower side in any manner. However, the dependency taken by the Tribunal at Rs.550/- per month appears to be on the lower side. It would be just and appropriate to deduct 1/3rd amount on account of personal expenses of the deceased and to determine the dependency thereafter. The dependency, thus, would come to Rs.667/- per month and after applying a multiplier of 16 as adopted by the Tribunal, the total compensation would come to 667 x 12 x 16 = Rs.1,28,000/- approximately.

Accordingly, it is held that the claimants shall be entitled to a total compensation of Rs.1,28,000/-. Besides this, the claimants shall also be entitled to interest at the rate of 9% per annum on the enhanced compensation from the date of award till realization.

Since the negligence of the offending truck and the offending bus has been held to be equal Rs.64,000/- shall be paid by Haryana Roadways and Haryana State and the Insurance Company and balance

amount of Rs.64,000/- shall be payable by the driver, owner and New India Assurance Company (the insurer of the truck).

The Tribunal had on the basis of tariff applicable at the relevant time restricted the liability of Insurance Company (respondent No.3-A) with which bus was insured at Rs.15,000/-. Accordingly, the liability of the Insurance Company of the bus shall be limited to Rs.15,000/- and the remaining amount of Rs.49,000/- shall be the liability of the Haryana Roadways and Haryana State. Similarly, the remaining amount of compensation of Rs.64,000/- shall be paid by the driver, owner as well as M/s New India Assurance Company and the primary liability for the same shall be of the said Insurance Company.

Accordingly, the award passed by the Tribunal stands modified as indicated above and appeal stands disposed of.

September 20th, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE